

Benjamin Schonbrun SBN 118323  
schonbrun.ben@gmail.com  
Michael D. Seplow, SBN 150183  
mseplow@gmail.com  
SCHONBRUN DESIMONE SEPLOW  
HARRIS HOFFMAN & HARRISON LLP  
723 Ocean Front Walk  
Venice, California 90291  
Telephone: (310) 396-0731  
Fax: (310) 399-7040

John Raphling SBN 169554  
LAW OFFICES OF JOHN RAPHLING  
723 Ocean Front Walk  
Venice, California 90291  
Telephone: (310) 823-4620  
Fax: (310) 823-4632

Attorneys for Plaintiffs  
Martha Rauda and Regulo Puebla

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARTHA RAUDA, REGULO  
PUEBLA, individually and as successors  
in interest to MARTHA PUEBLA,  
decedent,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a public  
entity, CHIEF WILLIAM BRATTON, an  
individual, DETECTIVE MARTIN  
PINNEN, an individual, DETECTIVE  
JUAN RODRIGUEZ, an individual,  
AND DOES 1 THROUGH 10

Defendants.

No. CV-08-3128 CAS (PJWx)

**PLAINTIFFS' REPLY TO  
DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' PROPOSED  
JUDGMENT AND OBJECTION TO  
DEFENDANTS' ALTERNATIVE  
PROPOSED JUDGMENT**

Plaintiffs Martha Rauda and Regulo Puebla hereby submit the following  
Reply to Defendants' Opposition to Plaintiffs' Proposed Judgment and Objection  
to Defendants' Alternative Proposed Judgment.

1           **I. JUDGMENT HAS NOT BEEN ENTERED IN THIS ACTION.**

2           Defendants erroneously and disingenuously contend that a judgment has  
3 already been entered in this action on September 10, 2010 pursuant to the 150 day  
4 rule of FRCP 58(c)(2)(B) based on the jury's verdict in Phase 2 of the trial. First,  
5 this position is contrary to this Court's prior determination that: **"A judgment in**  
6 **this matter will not be entered until after the Court rules on Plaintiffs'**  
7 **Motion for Attorneys Fees."** [September 23, 2010 Order at 2:9-10] (emphasis  
8 added). Indeed, in the Stipulation submitted to the Court prior to the September  
9 23, 2010 Order, Defendants had expressly agreed that no judgment had been  
10 entered and that the parties would "meet and confer regarding the submission of a  
11 proposed judgment" to be entered after the Court ruled on Plaintiffs' Motion for  
12 Attorneys Fees.<sup>1/</sup>

13           Moreover, contrary to Defendants' assertion, the Jury Verdict on Phase 2 of  
14 the trial was not an appealable order and needed to be reduced to a separate  
15 judgment. The 150 day rule was intended to deal with situations where the Court  
16 has clearly disposed of a case, such as by granting a motion for summary  
17 judgment, but has neglected to place that ruling in a separate document so that the  
18 deadline to appeal or file post judgment motions does not continue indefinitely.  
19 Here, there simply has been no court order or ruling disposing of this case.<sup>2/</sup>

20           Indeed, it was clear to both the Court and the parties that the case had not  
21 been finally disposed of and the parties had recognized that in the interest of  
22

---

23           1. Copies of the Court's September 23, 2010 Order and the Parties'  
24 Stipulation Re Motion For Attorneys' Fees are attached hereto as Exhibits A and  
25 B respectively.

26           2. For example, there has been no written order or decree of the Court  
27 which states that Plaintiffs are entitled to an award of nominal damages against  
28 Defendant City of Los Angeles on their *Monell* claim.

1 judicial economy, final judgment would not be entered until after the Court ruled  
2 on the motion for attorneys' fees. Given the circumstances of this case, applying  
3 the 150 day rule based on the date of the jury's verdict would be a strained reading  
4 of the rule, especially since there has been no order disposing of this case and both  
5 the Court and the parties were aware that in light of the jury's verdict, there were  
6 going to be critical post trial motions which needed to be addressed before this  
7 case was finally decided. As stated in the Advisory Committee Notes to the 2002  
8 Amendments to FRCP 58: "The new all purpose definition of the entry of  
9 judgment must be applied with **common sense** to other questions that may turn on  
10 the time when judgment is entered. If the 150 day provision in Rule 58B(b)(2)(B).  
11 . . . serves no purpose or would defeat the purpose of another rule, it should be  
12 disregarded." (emphasis added).

13 In this case, there was no prior order or ruling which could have been  
14 considered a judgment on the merits and it has been acknowledged by both parties  
15 and the Court that a final judgment would be reduced to a separate document once  
16 the Court ruled on the parties' post trial motions, including the motion for  
17 attorneys fees. Therefore, the 150 day rule does not apply to this case.

18 Further, contrary to Defendants' assertions, Plaintiffs' filing of a motion for  
19 a new trial prior to the entry of judgment did not serve as a waiver of the separate  
20 document requirement. The Advisory Committee Notes to FRCP 58 recognize  
21 that post trial motions are often filed prior to the entry of judgment but the fact that  
22 a separate document is not required for an order ruling on certain post trial  
23 motions (such as a motion for attorneys fees) "**does not excuse the obligation to**  
24 **set forth the judgment itself in a separate document.**" (emphasis added)<sup>3/</sup>

---

25  
26 3. Defendants' reliance on *Casey v. Albertson's Inc.*, 362 F.3d 1254 (9<sup>th</sup> Cir.  
27 2004) is misplaced because that case involved a motion under FRCP 60 *for relief*  
28 *from judgment* that was filed one year after the Court had granted a motion for

1 Accordingly, a final judgment in this case has not been entered and the Court  
2 should enter the proposed judgment submitted by Plaintiffs.

3  
4 **II. DEFENDANTS' PROPOSED JUDGMENT DOES NOT COMPLY**  
5 **WITH FRCP 54 AND THEREFORE THE COURT SHOULD ADOPT**  
6 **THE PROPOSED JUDGMENT SUBMITTED BY PLAINTIFFS.**

7 Plaintiffs object to Defendants' proposed judgment on the grounds that it is  
8 contrary to the dictates of Rule 54(a) of the Federal Rules of Civil Procedure  
9 because it contains "a record of prior proceedings."<sup>4/</sup> In particular, Defendants'  
10 proposed judgment recites a litany of prior proceedings, including the jury's  
11 verdict, which expressly contravenes the plain language of Rule 54(a).<sup>5/</sup>

12 Further, Defendants' proposed judgment does not refer to interest accruing  
13 on the judgment. Accordingly, this Court should reject Defendants' proposed  
14 judgment and instead should enter the proposed judgment which was previously  
15 submitted to the Court by Plaintiffs on December 30, 2010.

16  
17  
18 

---


19 summary judgment. In *Casey*, it was clear that the plaintiff had treated the ruling  
20 on the summary judgment as a final judgment. 362 F.3d at 1259. In this case,  
21 Plaintiffs' filing of a motion for a new trial under FRCP 59 (which is significantly  
22 different from a motion under FRCP 60 for relief from judgment) prior to the entry  
23 of judgment was proper and was never intended to waive the separate document  
24 requirement.

25 4. FRCP 54 (a) states in relevant part: "A judgment should not include  
26 recitals of pleadings, a master's report or a record of prior proceedings."

27 5. Moreover, the recital of the prior proceedings contained in Defendants'  
28 proposed judgment is misleading in that the Court orally ruled on Plaintiffs'  
request for nominal damages *prior* to the commencement of the Second Phase of  
the trial on April 13, 2010.

1 Dated: January 7, 2011

SCHONBRUN DESIMONE SELOW  
HARRIS HOFFMAN & HARRISON LLP

2  
3  
4 By:   
5 Benjamin Schonbrun  
6 Michael D. Seplow  
7 Attorneys for Plaintiffs  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

1 Presented by:  
2 Benjamin Schonbrun SBN 118323  
3 schönbrun.ben@gmail.com  
4 Michael D. Seplow, SBN 150183  
5 mseplow@gmail.com  
6 SCHONBRUN DESIMONE SEPLOW  
7 HARRIS HOFFMAN & HARRISON LLP  
8 723 Ocean Front Walk  
9 Venice, California 90291  
10 Telephone: (310) 396-0731  
11 Fax: (310) 399-7040

12 John Raphling SBN 169554  
13 LAW OFFICES OF JOHN RAPHLING  
14 723 Ocean Front Walk  
15 Venice, California 90291  
16 Telephone: (310) 823-4620  
17 Fax: (310) 823-4632

18 Attorneys for Plaintiffs  
19 Martha Rauda and Regulo Puebla

20  
21 **UNITED STATES DISTRICT COURT**  
22  
23 **CENTRAL DISTRICT OF THE STATE OF CALIFORNIA**  
24

25 MARTHA RAUDA, REGULO  
26 PUEBLA, individually and as  
27 successors in interest to MARTHA  
28 PUEBLA, decedent,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a public  
entity, CHIEF WILLIAM BRATTON,  
an individual, DETECTIVE MARTIN  
PINNER, an individual, DETECTIVE  
JUAN RODRIGUEZ, an individual,  
AND DOES 1 THROUGH 10

Defendants.

NO. CV-08-3128 CAS (PJWx)

**ORDER GRANTING  
STIPULATION RE PLAINTIFFS'  
MOTION FOR ATTORNEYS  
FEES**

1 The Court having reviewed the parties' Stipulation Re Plaintiffs' Motion for  
2 Attorneys Fees, and finding good cause therefore, approves the Stipulation and  
3 rules as follows:

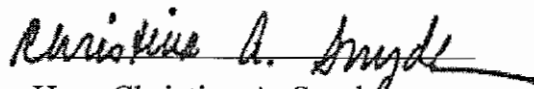
4  
5 1. The parties will meet and confer regarding a proposed briefing schedule  
6 on Plaintiffs' Motion for Attorneys fees, which Plaintiffs anticipate filing within  
7 approximately the next 30 days;

8  
9 2. A judgment in this matter will not be entered until after the Court rules  
10 on Plaintiffs' Motion for Attorneys Fees;

11  
12 3. After Court issues a ruling on Plaintiffs' Motion for Attorneys fees,  
13 counsel for the parties will meet and confer regarding the submission of a proposed  
14 judgment to the Court.

15  
16 IT IS SO ORDERED.

17  
18  
19 Dated: September 23, 2010

  
Hon. Christina A. Snyder  
United States District Judge



# **EXHIBIT B**

1 Benjamin Schonbrun SBN 118323  
schonbrun.ben@gmail.com  
2 Michael D. Seplow, SBN 150183  
mseplow@gmail.com  
3 SCHONBRUN DESIMONE SEPLOW  
HARRIS HOFFMAN & HARRISON LLP  
4 723 Ocean Front Walk  
Venice, California 90291  
5 Telephone: (310) 396-0731  
Fax: (310) 399-7040  
6

7 John Raphling SBN 169554  
LAW OFFICES OF JOHN RAPHLING  
723 Ocean Front Walk  
8 Venice, California 90291  
Telephone: (310) 823-4620  
9 Fax: (310) 823-4632

10 Attorneys for Plaintiffs  
Martha Rauda and Regulo Puebla  
11

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF THE STATE OF CALIFORNIA  
14

15 MARTHA RAUDA, REGULO  
PUEBLA, individually and as  
16 successors in interest to MARTHA  
PUEBLA, decedent,

17 Plaintiffs,  
18

19 vs.

20 CITY OF LOS ANGELES, a public  
entity, CHIEF WILLIAM BRATTON,  
21 an individual, DETECTIVE MARTIN  
PINNEN, an individual, DETECTIVE  
22 JUAN RODRIGUEZ, an individual,  
23 AND DOES 1 THROUGH 10  
24

25 Defendants.  
26  
27  
28

NO. CV-08-3128 CAS (PJWx)

STIPULATION RE PLAINTIFFS'  
MOTION FOR ATTORNEYS  
FEES

1 WHEREAS, on or about June 23, 2010, Plaintiffs filed a motion for a new trial  
2 on damages pursuant to FRCP 59

3  
4 WHEREAS, on or about July 19, 2010, Defendants filed a Motion for  
5 Judgment as a Matter of Law pursuant to FRCP 50;

6  
7 WHEREAS, on or about August 20, 2010, the Court issued an order denying  
8 Plaintiffs' Motion for a New Trial on damages and denying Defendants' Motion for  
9 Judgment as a Matter of Law;

10  
11 WHEREAS, on September 10, 2010, counsel for the parties participated in a  
12 conference pursuant to Local Rule 7.3 regarding Plaintiffs' anticipated Motion for  
13 Attorneys Fees pursuant to 42 U.S.C. Section 1988;

14  
15 WHEREAS, during the Rule 7.3 conference, counsel for the parties agreed that  
16 Plaintiffs would be filing their Motion for Attorneys Fees within approximately 30  
17 days and that they would confer regarding a hearing date and a briefing schedule prior  
18 to the filing of Plaintiffs' Motion for Attorneys fees. Counsel for the parties also  
19 agreed that, in the interests of judicial economy, a judgment in this matter should not  
20 be entered until after the Court rules on the Motion for Attorneys Fees and that once  
21 the Motion for Attorneys Fees has been decided by the Court, the parties would meet  
22 and confer regarding the submission of a proposed judgment to the Court.

23  
24 THEREFORE, IT IS HEREBY STIPULATED THAT:

25  
26 1. The parties will meet and confer regarding a proposed briefing schedule on  
27 Plaintiffs' Motion for Attorneys fees, which Plaintiffs anticipate filing within  
28 approximately the next 30 days;

2.

1 2. A judgment in this matter should not be entered until after the Court rules  
2 on Plaintiffs' Motion for Attorneys Fees;  
3

4 3. After Court issues a ruling on Plaintiffs' Motion for Attorneys fees, counsel  
5 for the parties will meet and confer regarding the submission of a proposed judgment  
6 to the Court.  
7

8  
9 DATED: September 17, 2010 SCHONBRUN DeSIMONE SEPLOW  
HARRIS HOFFMAN & HARRISON LLP

10  
11 By:   
12 Benjamin Schonbrun  
Michael D. Seplow  
Attorneys for Plaintiffs  
13

14 DATED: September 17, 2010 OFFICE OF THE CITY ATTORNEY  
15

16  
17 By:   
18 Elizabeth Fitzgerald  
Deputy City Attorney  
Attorneys for Defendants  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28